SUPREME COURT OF THE UNITED STATES.

CITY OF NEW ORLEANS,
Plaintiff in Error, Defendant.

versus

MARY QUINLAN,
Defendant in Error, Plaintiff.

BRIEF ON BEHALF OF PLAINTIFF, DEFENDANT IN ERROR.

Sec. 563. "Nor shall any Circuit Court or District Court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such Court to recover thereon, if no assignment has been made, except in cases of promissory notes negotiable by the law merchant and bills of exchange."

1 Sup. Rev. Stats. 176. Acts of 1875.

The statute of 1888, under which this suit was brought, is as follows:

"Nor shall any Circuit or District Court have cognizance of any suit, except upon foreign bills of exchange, to recover the contents of any promissory note or other chose

in action, in favor of any assignee, or of any subsequent holder, if such instrument be payable to bearer and be not made by a corporation, unless such suit might have been prosecuted in such Court to recover the said contents, if no assignment or transfer had been made."

25 Statutes at large, p. 434.

This suit is brought on an instrument payable to bearer and made by a corporation. The instrument sued upon is transferable by delivery. The holder thereof is the owner to all intents and purposes. The instrument is not a negotiable one under the law of merchants and need not be.

The law of 1888, which amends the act of 1875, is very different from the former.

The statute contains an exception to the general rule in favor of instruments made by a corporation and payable to bearer.

In Jerome vs. Rio Grande Co., 18 Fed. Rep., p. 873, Hallett J. decided, "a question has arisen whether upon such warrants, payable to a person named or to bearer, which circulate from hand to hand without indorsement, an action can be maintained by a holder, a citigen of another States, against a County in this State, without showing that the persons to whom they were issued are qualified to sue in this Court.

It cannot be contended that such warrants are negotiable as bills of exchange or promissory notes and free from all equities in the hands of an innocent holder. All holders take them subject to any defense that may be made against the payee, even when they are payable to bearer.

Dill. Mun. Cor., 3d Ed., Secs. 487-503.

Nevertheless, as they are payable to bearer, the property therein passes by delivery, and a note payable to bearer is payable to anybody and not effected by the disabilities of the nominal payee.

Bank of Ky. vs. Wister, 2 Pet. 318.

Such instruments are not assignable within the meaning of the Act of Congress of 1875, regulating the jurisdiction of this Court. (18 Sta. 470.) They are taken to be due on an original and direct promise to the bearer and not by assignment from the payee and past holder. Thompson vs. Perrine, 106 U. S. 589."

Judge Billings decided with the concurrence of Judge Pardee, C. J., "That under the Act of 1887, those rights of action, which required an assignment, were excluded from the jurisdiction, unless the assignor could have prosecuted the action to recover thereon before the assignment. Those choses in action which did not require any express assignment, because they were payable to bearer, and thus passed by delivery, were also excluded, from the jurisdiction, unless made by some corporation, if the transferee could not have maintained suit thereon before transfer. The construction of the restriction may also be stated thus: The Circuit Court shall have no jurisdiction over suits for the recovery of the contents of promissory notes or other choses in action brought in favor of assignees or transferees, except over: First, suits upon foreign bills of exchange; second, suits that might have been proescuted in such Courts to recover the said contents, if no assignment or transfer had been made; third, suits upon choses in action, payable to bearer, and made by a corporation."

This decision has been followed without dissent and reflects the true construction of the statute of 1888.

Movable property is not considered negotiable and yet if the owner of that specie of property should sue in the Courts of the United States for the recovery of such property no one would contend that an averment would have to be made, that the transferer or vendor had the right to sue for same.

The contention in the brief of plaintiff in error, that because the instrument sued upon is not negotiable, therefore the Court is without jurisdiction, has no foundation in the words of the Statute and does not exist.

The decision of Judge Billings has been followed in:

Rollins vs. Chaffe, 34 Fed. Rep. 91.

Laird vs. Indemnity Assurance Co., 44 F. R. 712; 43 F. R. 481; 46 F. R. 357; 57 F. R. 1036; 66 F. R. 377.

The lower Court properly maintained its jurisdiction and the judgment should be affirmed with costs.

Respectfully submitted,

CHAS. LOUQUE,

Of Counsel.

N. O., Dec. 13th, 1897.